

BODY: Eastbourne Cabinet

DATE: 12th July 2017

SUBJECT: EHICL and Joint Housing Investment Partnership with Lewes District Council – JHIP

REPORT OF: Robert Cottrill, Chief Executive

Ward(s): All Wards

Purpose: To up-date Members on progress with the establishment of JHIP and set out plans for first phase delivery.

To update on the progress of Eastbourne Housing Investment Company (EHICL).

To agree officer delegations for the purpose of loans and associated matters.

Contact: Robert Cottrill, Chief Executive, Telephone 01323 415002 or internally on extension 5002. Email: robert.cottrill@eastbourne.gov.uk

- Recommendations:**
- 1 To approve the focus of first phase housing delivery via JHIP.
 - 2 To agree that all and any future decisions to agree scheme lending parameters for loans to EHICL, including decisions about the types of property for which any loan might be made and the terms of any such loan, shall be delegated to the council's Chief Executive in consultation with the council's Chief Finance Officer (and Monitoring Officer, where appropriate), and in consultation with the Cabinet Portfolio Holders for Community and Finance.
 - 3 To agree that any future purported delegation to officers to negotiate and/ or agree terms and/or confer any benefit (financial or otherwise) on any company or partnership in which the council has an interest shall be a delegation to the council's Chief Executive in consultation with the council's Chief Finance Officer (and Monitoring Officer, where appropriate), and in consultation with the relevant Cabinet Portfolio Holders.
 - 4 To agree that the council will build governance audits as described in para 5.8 of this report into its annual work programme.

1.0 Introduction

- 1.1 On 22nd March 2017 Cabinet authorised officers to take the necessary steps to establish a Joint Housing Investment Partnership (JHIP) with Lewes District Council. The new partnership is to take the form of a Limited Liability Partnership(LLP)
- 1.2 The new JHIP was formally incorporated on 1st July 2017. It has unrestricted objectives but its primary purpose is to act as the asset holding vehicle for affordable housing properties that cannot, for financial accounting or other reasons, be held in Eastbourne BC and Lewes DC's respective Housing Revenue Accounts (HRA's). Such properties may be acquired as a consequence of Eastbourne BC's new development programme via Eastbourne Housing Investment Company Limited (EHICL) or may be direct acquisitions into JHIP.
- 1.3 In March 2017 Cabinet also approved an associated recommendation to allocate up to £30m in the Council's capital programme to progress the next phase of delivery for EHICL (£20m) and first phase delivery for JHIP (£10m), in both cases for the delivery of new mixed tenure homes and associated activities.
- 1.4 This report provides:
- An up-date on delivery for EHICL
 - For approval, a programme of JHIP street property/block acquisitions to meet immediate housing priorities
 - Confirmation of financial and operational delegations under which first phase delivery will be progressed.

2.0 Delivery Up-date EHICL

- 2.1 EHICL was established in 2015 and has been actively bringing forward a mixed development programme for just over 2 years. The programme comprises:

Scheme	Purchase Price	Residential Units	Description
Street Property acquisitions	£471k	3	Target 30 from £5m separate Cabinet delegation Nov 2016
Gowland Court	£1,450k	12	Targeted acquisition in regeneration area – 12 market rent properties plus commercial space let to Devonshire Collective

Victoria Mansions	£5,200k	36	Targeted acquisition in Town Centre – 22 commercial units, 20 flats market rent, 16 flats long leasehold
HRA and G/F Transfers	£748k	18	Transfer of unsuitable assets for redevelopment and re-let as market rent. 27 Longstone, 13 The Avenue, 84-90 Northbourne Road,
183 Langney Road	£335k	15	Site purchase for new build block. Development partnership with ESCC for key worker accommodation – teachers
Total	£8,204k	84	

2.2 EHICL's programme is advanced and represents a mixed portfolio that helps meet the Council's strategic objectives in a number of ways. Through the financial delegations and established governance arrangements next phase delivery of acquisitions and new developments will further promote place shaping, generate financial returns and enable the Council to more directly meet strategic housing priorities.

3.0 JHIP Proposal

- 3.1 It is proposed to bring forward a £5m affordable homes programme of 37 x street/block acquisitions through JHIP in addition to the EHICL street acquisition programme.
- 3.2 The EHICL street acquisition programme will go some way to help meet demand but does not provide an affordable offer. EHICL rentals charged to the tenants are typically 20% higher than LHA rates in order to meet commercial development viability criteria.
- 3.3 The benefit of an additional JHIP programme is that rents can be set at affordable levels as the company can utilise right to buy receipts. This capital subsidy means rents can be set at LHA levels whilst still achieving financial viability requirements.
- 3.4 The proposal is therefore in line with the primary purpose of JHIP to provide extra capacity for the Council to provide new affordable housing beyond the constraints of the HRA.
- 3.5 Through future phase delivery JHIP will also act as the asset holding vehicle for affordable housing properties developed through the EHICL and its Lewes counterpart, Lewes Housing Investment Company Limited (LHICL) commercially focused development programmes. As an example for larger pipeline EHICL schemes, such as Bedfordwell Road, the required affordable housing will be transferred on completion to JHIP as there is insufficient headroom within the HRA to enable direct incorporation and the Council would otherwise lose control over delivery and letting of these homes. The earliest expected transfers to JHIP will take place in 2018. In the

meantime there is continued pressure on the Council to meet housing need in very challenging times. EBC is spending on average £40 a night on procuring the rental of emergency accommodation in Eastbourne for those whom the Council may have a duty to assist with housing.

4.0 Financial Appraisal

- 4.1 The proposed JHIP programme will be delivered in parallel with the EHICL street acquisitions to ensure efficiency of resourcing and that we maximise buying power.
- 4.2 Through the EHICL programme we have established procedures in place for assessing viability and undertaking all pre acquisition due diligence. The development viability appraisals have assumptions which reflect the particular requirements of this type of development such as site finder fees. These form part of the capital on costs attributed to each scheme.
- 4.3 The proposed JHIP programme will be brought forward under the £10m of previously approved capital programme delegation and will be subject to all associated financial, legal and regulatory requirements.
- 4.4 The legal implications section provides further detail on how this will operate in relationship to existing and proposed governance arrangements. It also explains how individual directors will exercise their delegated powers in relationship to individual transactions and overall programme control.

5.0 Legal Implications

- 5.1 In order to make best use of available finance and resources in a rapidly changing legal environment, both Eastbourne BC and Lewes DC are developing new ways of working together and are developing and establishing new corporate vehicles such as council companies and legal partnerships to help exploit maximum public benefit from these resources. These new ways of working can make for complex relationships which need robust governance structures. Going forward there is a need to structure council decisions in such a way as to avoid officer conflicts of interest. As Eastbourne develops its shared working with Lewes this will become a key feature of the governance arrangements at both councils.
- 5.2 As a first step in implementing appropriate governance arrangements, this report recommends that all and any decisions which need to be made *by the Council* under officer delegations and which are in relation to or affect EHL, EHICL, the JHIP or any other company or legal partnership in which the council has an interest, shall be made by the council's Chief Executive in consultation with the council's Chief Finance Officer (and Monitoring Officer where appropriate) and in consultation with the appropriate Cabinet Portfolio holder.
- 5.3 Recommendation 2 of this report deals with prospective loans which may be made by Eastbourne BC to EHICL in accordance with a resolution of Cabinet on 13 July 2016. That resolution was as follows:
"To agree that the Council makes a loan facility available of up to £5m on market terms to Eastbourne Housing Investment Company Ltd (EHICL) for the purpose of enabling the company to purchase residential

accommodation”

- 5.4 Recommendation 3 of this report is more general and asks Cabinet to approve the principle that council delegations affecting council companies and partnerships should for the time being be reserved to the council’s statutory officers.
- 5.5 The same provisions are to be implemented at Lewes DC in relation to that council’s decision-making procedures.
- 5.6 The identification of the Chief Executive, Chief Finance Officer and Monitoring Officer (the council’s three statutory officers) as those officers responsible for undertaking any delegated decision-making on behalf of the Council in cases where decisions will affect council companies or partnerships will have the following benefit: it will leave those council Directors who have been appointed as directors of council controlled companies free to make decisions on behalf of those companies *in the best interests of those companies* (which is a legal duty of any director) without putting those officers in a position where they are conflicted between their council and their company obligations.
Whilst the interests of the council and its companies/ partnerships will often be aligned, this will not always be the case. They will sometimes be on opposite ends of a commercial transaction - for example, where one sells property to the other or makes a loan to it.
- 5.7 The Director of Service Delivery and the Director of Regeneration and Planning are particularly affected. The Director of Service Delivery, in his role as Board Director (EHICL) and operational Managing Director (EHL) will be responsible for securing any necessary decisions from the relevant company/companies.
- 5.8 Similar considerations will apply to the Director of Regeneration and Planning. She too is a Board Director of EHICL. An additional complexity in the case of this Director will be the need to put in place additional governance procedures to manage any potential conflict between her responsibilities for the council’s regeneration ambitions, including those realised through council companies and partnerships, and the council’s regulatory role as local planning authority.
- 5.9 The council’s legal team is currently working with external lawyers to identify specific governance procedures which we might introduce to make officer decision-making procedures conflict-free and more transparent. We will keep Cabinet abreast of any further changes which might be necessary.
- 5.10 In recognition of the complexities inherent in the challenges of joint and partnership working there should be regular governance audits to protect officers and to ensure that the provision put in place to avoid officer conflicts are working adequately. These should be built into the annual audit work programmes of both Eastbourne BC and Lewes DC.